
**APPEALS BOARD
UTAH LABOR COMMISSION**

LEXIE BOUD,

Petitioner,

vs.

**APPLEGATE HOMECARE and
WORKERS COMPENSATION
FUND,**

Respondents.

**ORDER SETTING ASIDE
ALJ'S DECISION**

ORDER OF REMAND

Case No. 06-1090

Lexie Boud asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Marlowe's dismissal of Ms. Boud's claim for benefits under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63-46b-12 and § 34A-2-801(3).

BACKGROUND

Ms. Boud claims workers' compensation benefits from Applegate Homecare and its insurance carrier Workers Compensation Fund (referred to jointly as "Applegate") for a work-related spine injury that occurred on October 16, 2004. Judge Marlowe appointed a medical panel, with Dr. Goldman as chair, to evaluate the medical aspects of Ms. Boud's claim.

On January 16, 2008, Dr. Goldman's office reported to Judge Marlowe that Ms. Boud had failed to attend her first appointment with the panel, had called in sick for the second appointment, and, on advice of counsel, had refused to reschedule a third appointment. Relying on the foregoing information, Judge Marlowe dismissed Ms. Boud's claim for failure to cooperate with the medical panel evaluation. Judge Marlowe also ordered Ms. Boud's attorney, Mr. Belnap, to pay the medical panel's fees in the sum of \$812.50.

In requesting review of Judge Marlowe's order, Ms. Boud asserts that the order is based on incorrect facts. By her own affidavit and that of her attorney, Ms. Boud represents that she was only scheduled for one appointment with Dr. Goldman's office, on January 11, 2008. However, she became ill on January 9, and on the evening of January 10 her attorney left telephone messages with both the Labor Commission and Dr. Goldman's office advising of Ms. Boud's illness. The next day, Ms. Boud's attorney left another message for Judge Marlowe and also called Dr. Goldman's office. Labor Commission records confirm Mr. Belnap's message to Judge Marlowe. Then, on January 16, Dr. Goldman's office called Ms. Boud to reschedule her appointment. However, at that time Ms.

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Boud understood her attorney was filing an objection to Dr. Goldman's appointment to the medical panel. For that reasons, she referred the caller to her attorney.

DISCUSSION AND CONCLUSIONS OF LAW

Section 34A-2-601(1) of the Utah Workers' Compensation Act authorizes the Labor Commission's ALJs to refer disputed workers' compensation claims to panels of medical experts. Pursuant to § 34A-2-602(1) the applicant is required to submit to examination by the panel. Section 34A-2-602(2) authorizes the Commission to suspend further consideration of the applicant's claim if the applicant "refuses to submit" or "obstructs" the examination.

In this case, Judge Marlowe relied upon information from a telephone conversation with Dr. Goldman's staff to conclude that Ms. Boud had willfully resisted submitting to the medical panel's examination. However, the affidavits of Ms. Boud and her attorney, together with some corroborating information from the Commission's own records, convince the Appeals Board that Ms. Boud has not refused to cooperate with the panel. The Appeals Board therefore reinstates Ms. Boud's claim for benefits and remands the matter to Judge Marlowe to complete the adjudication of Ms. Boud's claim. The Appeals Board also refers Ms. Boud's objection Dr. Goldman as a panel member to Judge Marlowe for such actions as she deems appropriate.

ORDER

The Appeals Board remands this matter to Judge Marlowe for further proceedings consistent with this decision. It is so ordered.

Dated this 26th day of March, 2008.

Colleen S. Colton, Chair

Patricia S. Drawe

Joseph E. Hatch